

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
WASHINGTON, D.C. 20230

In the Matter of	)
	)
NEOPOINT, INC.	)
15445 Innovation Dr.	)
San Diego, California 92 128.	)
	)
<u>Respondent</u>	)

ORDER RELATING TO RESPONDENT, NEOPOINT. INC.

The Bureau of Export Administration, United States Department of Commerce (BXA), having notified Neopoint, Inc. (formerly known as Innovative Global Solutions, Inc.) (hereinafter referred to as Neopoint), of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (Act),<sup>1</sup> and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (Regulations),<sup>2</sup> based on allegations in a

<sup>1</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The violations charged occurred in 1998 and 1999. The Regulations governing the violations at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-1999)). The Regulations define the violations that BXA alleges occurred in 1998 and 1999 and establish the procedures that apply to this matter.

proposed charging letter issued to Neopoint that: (1) on 10 occasions between on or about March 22, 1998, and on or about June 27, 1999, Neopoint violated Section 764.2(a) of the Regulations by exporting 128 bit encryption software (5D002) to South Korea without obtaining a Department of Commerce license as required by Section 742.4(a); and. (2) on nine of those 10 occasions, Neopoint violated Section 764.2(e) of the Regulations by transferring the software with knowledge that a Department of Commerce license was required, and thus with knowledge that it was committing a violation of the Regulations.

BXA and Neopoint having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me:

**IT IS THEREFORE ORDERED:**

FIRST, that a civil penalty of \$95,000 is assessed against Neopoint, which shall be paid to the U.S. Department of Commerce within 3 days from the date of entry of this Order. Payment shall be made by wire transfer as specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. V 1999)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Neopoint will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Neopoint. Accordingly, if Neopoint should fail to pay the civil penalty in a timely manner, the undersigned will enter an Order denying all of Neopoint's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Michael J. Garcia  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 2002<sup>nd</sup> day of February.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
WASHINGTON, D.C. 20230

_____	)
In the Matter of:	)
NEOPOINT: INC.	)
15445 Innovation Dr.	)
San Diego, California 92 128,	)
_____	)
Respondent	)

SETTLEMENT AGREEMENT BETWEEN NEOPOINT. INC. AND THE  
BUREAU OF EXPORT ADMINISTRATION

This Settlement Agreement is made by and between Neopoint, Inc. (formerly known as Innovative Global Solutions, Inc.) (hereinafter referred to as Neopoint) and the Bureau of Export Administration, United States Department of Commerce (BXA), pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2001)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (Act),\* and which are currently maintained in force under the

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The violations charged occurred in 1998 and 1999. The Regulations governing the violations at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998- 1999)). The Regulations define the violations that BXA alleges occurred in 1998 and 1999 and establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20,200 1. Since August 2 1,200 1, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)).

WHEREAS, BXA has notified Neopoint of its intention to initiate an administrative proceeding against Neopoint pursuant to the Act and the Regulations;

WHEREAS, BXA has issued a proposed charging letter to Neopoint pursuant to the Regulations, based on allegations that: (1) on 10 occasions between on or about March 22, 1998, and on or about June 27, 1999, Neopoint violated Section 764.2(a) of the Regulations by exporting 128 bit encryption software (ECCN 5D002) to South Korea without obtaining a Department of Commerce license as required by Section 742.4(a); and, (2) on nine of those 10 occasions, Neopoint violated Section 764.2(e) of the Regulations by transferring the software with knowledge that a Department of Commerce license was required, and thus with knowledge that it was committing a violation of the Regulations.

WHEREAS, Neopoint, has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Neopoint fully understands the terms of this Settlement Agreement and the Order that will be issued to give effect to this Settlement Agreement (Order);

WHEREAS, Neopoint enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Neopoint states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Neopoint neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Neopoint wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Settlement Agreement; and

WHEREAS, Neopoint agrees to be bound by the Order, when entered;

NOW THEREFORE, Neopoint and BXA agree as follows:

1. BXA has jurisdiction over Neopoint under the Regulations in connection with the matters alleged in the proposed charging letter.

2. BXA and Neopoint agree that the following sanction shall be imposed against Neopoint in complete settlement of the alleged violations set forth in the proposed charging letter:

- a. Neopoint shall be assessed a civil penalty in the amount of \$95,000 which shall be paid to the U.S. Department of Commerce within 3 days from the date of entry of the Order by wire transfer.
- b. The timely payment of the civil penalty agreed to in paragraph 2a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Neopoint. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Neopoint's export privileges for a period of one year from the date of entry of the Order imposing the civil penalty.

3. Neopoint agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Settlement Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.

4. BXA agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Neopoint in connection with any violation of the Regulations arising out the transactions identified in the proposed charging letter.

5. Neopoint understands that BXA will make the proposed charging letter, this Settlement Agreement, and the Order, when entered, available to the public.

6. BXA and Neopoint agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Neopoint agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement serve to bind,

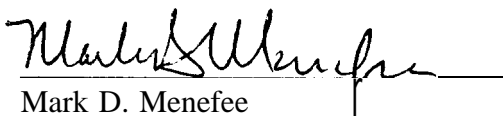
constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF EXPORT ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

NEOPOINT, INC.



Mark D. Menefee  
Director  
Office of Export Enforcement



Carl L. Garner  
Adjustment Division Manager  
San Diego Credit Association  
as Assignee of Neopoint, Inc.

Date: 2/12/02

Date: 2-7-02





**UNITED STATES DEPARTMENT OF COMMERCE**  
**Office of the General Counsel**

OFFICE OF THE CHIEF COUNSEL FOR EXPORT ADMINISTRATION  
Washington, DC. 20230

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Neopoint, Inc.  
15445 Innovation Dr.  
San Diego, California 92 128

c/o Carl Garner  
San Diego Credit Associates  
2044 1<sup>st</sup> Street, Suite 300  
San Diego, California 92 10 1

Dear Mr. Garner:

The Bureau of Export Administration, United States Department of Commerce ("BXA"), has reason to believe that Neopoint, Inc. (formerly known as Innovative Global Solutions, Inc.) (hereinafter referred to as Neopoint) has violated the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act"),<sup>2</sup> on 19 occasions. Specifically, BXA charges that Neopoint committed the following violations:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The violations charged occurred in 1998 and 1999. The Regulations governing the violation at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-1 999). The Regulations define the violations that BXA alleges occurred in 1998 and 1999 and establish the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025, August 22, 2001), has continued the Regulations in effect under the IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.

**Charges 1-10                    15 C.F.R. § 764.2(a) - Conduct Prohibited by or Contrary to the Regulations**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 10 separate occasions between on or about March 22, 1998, and on or about June 27, 1999, Neopoint exported 128 bit encryption software subject to the Regulations (ECCN 5D002) to South Korea without obtaining a Department of Commerce license required by Section 742.4(a) of the Regulations. In doing so, Neopoint committed 10 violations of Section 764.2(a) of the Regulations.

**Charges 11-19                15 C.F.R. § 764.2(e) - Acting with Knowledge - Knew or had Reason to Know that a Department of Commerce Export License was Required**

With respect to nine of the 10 separate exports, occurring on or about May 13, 1998, and on or about June 27, 1999, Neopoint acted with knowledge that a Department of Commerce license was required as evidenced by the fact that it had filed an application with BXA on or about May 11, 1998, seeking an export license to release 128 bit encryption technology and software to a South Korean foreign national in the United States. Accordingly, Neopoint exported encryption software subject to the Regulations (ECCN 5D002) to South Korea without obtaining the Commerce Department licenses that Neopoint knew or had reason to know were required by Section 742.4(a) of the Regulations, thereby committing nine violations of Section 764.2(e) of the Regulations.

Accordingly, Neopoint is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BXA.

If Neopoint fails to answer the charge contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. See 15 C.F.R. §§

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<sup>3</sup> Pursuant to the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. § 2461, note (1994 & supp. v 1999)), and 15 C.F.R. § 6.4(a)(2), the maximum penalty for each violation committed after October 23, 1996 and before November 1, 2000 is \$11,000.

766.6 and 766.7. If Neopoint defaults, the Administrative Law Judge may find the charge alleged in this letter are true without a hearing or further notice to Neopoint. The Under Secretary for Export Administration may then impose up to the maximum penalty on the charges in this letter.

Neopoint is further notified that it is entitled to an agency hearing on the record if Neopoint files a written demand for one with its answer. See 15 C.F.R. § 766.6. Neopoint is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. See 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. See 15 C.F.R. § 766.18. Should you have a proposal to settle this case, your or your representative should transmit it to me through the attorney representing BXA named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Neopoint's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street, Baltimore, Maryland 21202-4022

In addition, a copy of Neopoint's answer must be served on BXA at the following address:

Chief Counsel for Export Administration  
Attention: David C. Recker  
Room H-3839  
United States Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

David C. Recker is the attorney representing BXA in this case. Any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5304.

Sincerely,

Mark D. Menefee  
Director  
Office of Export Enforcement

**SCHEDULE A -- SCHEDULE OF VIOLATIONS BY  
NEOPOINT, INC.**

<u>SHIPMENT #</u>	<u>DATE</u>	<u>COMMODITY</u>	<u>DESTINATION</u>
1	03/22/98	Software 3.1.3 (1)	South Korea
2	05/13/98	Software 3.1.3 (1)	South Korea
3	06/24/98	Software 3.1.3 (1)	South Korea
4	10/19/98	Software 3.1.3 (1)	South Korea
5	11/23/98	Software 3.1.3 (1)	South Korea
6	01/05/99	Software 3.1.3 (1)	South Korea
7	02/22/99	Software 3.1.3 (1)	South Korea
8	03/28/99	Software 3.1.3 (1)	South Korea
9	06/12/99	Software 3.1.3 (1)	South Korea
10	06/27/99	Software 3.1.3 (1)	South Korea